With respect first to its criticism that the proposed plant would produce a low grade concentrate, which would need further processing—petitioner demonstrates at pages 23-24 of its petition that the production of a slurry was only one of several alternatives that might be pursued. The letter plainly points out that the slurry approach appeared impractical and that the most reasonable use of petitioner's ores could be made by petitioner's building its own processing mill. Moreover, the processing of a slurry to be upgraded in another mill was in complete accord with AEC policy and petitioner's extensive investigation into this procedure was *at the behest and on the advice of the AEC's Mr. Jones.* (Pet. pp. 23-24).[6] Respondent's further

[6] Respondent's argument on this point is in direct variance with the AEC's established policy with respect to the upgrading of ores and the further processing of a slurry product. In an address given by Mr. Jones on April 6, 1957, he pointed out that private industry was showing a greater interest in exploring the possibility of applying upgrading methods to uranium ores. Specifically, he stated that "we believe that upgrading of ores at the site of a deposit may have application in the industry." (D. Ex. 1, 4/6/57, pp. 3-5). Additionally, the AEC entered into a contract with Union Carbide Nuclear Company on June 8, 1956 providing for the construction and operation by UCN of a new uranium processing mill at Rifle, Colorado, and for two new ore receiving stations and chemical upgrading plants on the Colorado Plateau. The slurry product produced in one of the upgrading plants is roughly the same type slurry product that Northwest was discussing with the AEC. (Df. Ex. 2; Tr. 525.) Thus, whether petitioner's July 13, 1957 letter is considered a proposal for a "slurry" product (which even a cursory reading will disprove) as respondent contends, or a proposal for the construction of a mill (as petitioner contends), it could have ripened into a formal contract but for the AEC's refusal to complete negotiations. Respondent repeats its inaccurate conclusion at note 1, page 5 to the effect that the AEC contracts were "for complete rather than partial processing of the ore"; this statement is adequately rebutted by the foregoing which conclusively demonstrates that the AEC did entertain contracts for only the partial processing of ore.

assertion that the ore reserves would permit only a four year operation is equally fallacious. If a 400 ton mill (as petitioner proposed) were to operate 360 days a year it would process 144,000 tons of ore per year and in five years would process approximately 720,000 tons of ore, which amount is only approximately 30,000 tons above petitioner's established reserves. In addition, petitioner owned the rights to ores on the Boyd lease adjacent to the Peters' land which had inferred reserves sufficient to operate a 400 ton mill for an additional three or four years. Respondent's point number three that the plant would not accommodate ore from other sources is not contrary to AEC policy. The May 24, 1956 announcement clearly stated that whether or not custom ore would be handled by mills in the 1962-66 period was a matter of discretion with the AEC. Prior to 1962 (in fact in 1957 the year Northwest was seeking to formalize its contract), the AEC entered into a contract with the Carter Corporation, providing only that "should other properties in the area produce uranium ore, the corporation *may* purchase such ores for treatment." Df. Ex. 2, P.R. 190, 5/23/57. Thus it is seen upon examination that the objections conjured up by respondent are not in fact valid objections. This discussion also conclusively demonstrates that it was the failure of the AEC to go forward with negotiations rather than any shortcomings on the part of petitioner's proposals which accounted for the lack of a formal contract here.

3. Respondent cites (at p. 5) the October 28, 1957 "announcement" of the AEC placing limitations upon its future uranium procurement policies. This was the first announcement by the AEC that it was changing its program and would no longer continue to buy unlimited quanties of uranium. (Tr. 1556). The an-

nouncement was considered by the AEC to constitute a "policy change" in its established procurement program. (P. Ex. 62, 2/1/58, p. 4; Tr. 1447, 1474, 1524, 1555. See also D. Ex. 2, P.R. 210, 4/2/58, par. 2)

Under the announced "policy change" of October 28, 1957, proposals which had been submitted prior to that date and which were under review were to be considered in the light of the discussions which had taken place between the AEC and the prospective contractor. Inasmuch as Northwest had submitted its formal proposal for a uranium mill contract prior to the announced policy change, its proposal should have been considered in light of what had transpired prior to that date between Northwest and the AEC.

Respondent studiously avoids mentioning in its brief the all-important May 24, 1956 announcement which extended the guaranteed market into the 1962-66 period. The announcement clearly obligated the AEC to purchase *all* uranium concentrate produced and it did purchase tremendous amounts of concentrate under the announced guarantee. The October 28, 1957 speech announcing a "policy change" did not purport to specifically revoke the terms of the May 24, 1956 announcement. In fact, the May 24th guaranteed uranium concentrate program announcement *was not formally modified until November 24, 1958* when the AEC stated in the Federal Register that

> "The Commission will carry out its May 24, 1956, commitment with respect to ore reserves developed prior to this date in reliance upon the May 24 announcement... By issuance of this announcement the AEC hereby withdraws *prospectively* the concentrate purchase program announced May 24, 1956." (Emphasis added.) 23 Fed. Reg. 9112 (1959).

Thus it is seen that the AEC did not formally withdraw the May 24, 1956 program (and then only *prospectively*) until November 24, 1958, some thirteen months after petitioner had submitted its final proposal for a uranium concentrate contract. Petitioner, with its highly qualified personnel, who were cognizant of all phases of the procurement program, developed the ore reserves on its property after May 24, 1956 in reliance upon that announcement, and had submitted its final application long before the November 24, 1958 modification. Thus when one considers the November 24, 1958 announcement (which was the first formal revocation of the May 24, 1956 guarantee), the October 28, 1957 "policy change" speech takes on far less significance. Moreover, petitioner continued to seek out the AEC personnel during the period between October 28, 1957 and the November 24, 1958 revocation.[7] In the

[7] The AEC's refusal to finalize a contract with petitioner is even more blatant when one considers all of petitioner's attempts after October 28, 1957, to get the AEC to fulfill its statutory and administrative duties to negotiate a contract. Thus on November 12, 1957, Mr. Wilson talked to Mr. Jones about petitioner's proposals. Mr. Jones was very vague concerning discussions previously held in Washington, D.C. on July 30, 1957. (Tr. 342). On November 15, 1957, Mr. Wilson again contacted Mr. Jones by telephone and a tentative date was set for a meeting on November 26. In regard to this telephone conversation, Mr. Wilson referred to his diary showing that Mr. Jones was asked if the AEC "would buy" and Mr. Jones replied, "Yes." In the course of this conversation, Mr. Jones stated that the AEC would send a man up to the Northwest property the following week. The AEC did in fact subsequently send a Mr. Gordon to review petitioner's ore reserves. (Tr. 668; 343; D. Ex. 13; Wilson's Diary; Jt. Ex. A., Item 20.) On November 22, 1957, Mr. Wilson contacted Mr. Johnson concerning the possibility of some arrangement with the Dawn Company. Correspondence passed between Mr. Wilson and Mr. Johnson's office. (Jt. Ex. A, Item 21; Tr. 136.) On January 15, 1958, Dr. F.E. Scott, president of Northwest; Elmer Johnson, counsel for Northwest; and Mr. Wilson visited Mr. Johnson in Washington. The

light of all of this, it is difficult to comprehend respondent's faulting petitioner for failing to enter into negotiations for finalization of a contract.

4. Respondent states at page 4 of its brief that petitioner's property contained "more than 600,000 tons of relatively low grade ore." This statement is incomplete and incorrectly suggests that petitioner's reserves amounted to little more than 600,000 tons. Petitioner's estimates of its established reserves on the Peters' lease was 683,660.48 tons of ore (Pet. 10a); however, respondent ignores petitioner's "inferred" reserves of between 400,000 and 500,000 tons of amenable ore on the Boyd lease which petitioner also held. Petitioner's total reserves were therefore more on the order of approximately 1,200,000 tons and not 600,000 as respondent states. The AEC never criticized the ore reserves of petitioner and if it had, petitioner could have readily established the reserves on the Boyd lease.

5. Respondent's statement in note 1, page five that contracts were awarded "only if there were at least a

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purpose of this visit was an attempt to get a decision on the uranium concentrate contract requested by Northwest in their July 13 and October 9, 1957 proposals. Mr. Johnson advised Northwest that he could give them no help. (Tr. 138; 1504.) On February 17, 1958, Dr. Scott wrote Mr. Johnson a letter in which he reviewed the AEC's policies and Northwest's activities in the uranium field and requested the AEC to give immediate consideration to a review of its pending application. (Jt. Ed. A., Item 23.) No reply was ever received from the AEC. On February 25, 1958, Mr. Wilson appeared at the hearings before the Joint Committee on Atomic Energy, 85th Cong., 2d Sess., on problems of the uranium mining and milling industry. (D. Ex. 5; P. Ex. 62.) In his testimony, Mr. Wilson attempted to get some relief for the position Northwest found itself in as a result of the October 28, 1957 announcement. (Tr. 139.)

five year ore reserve" is wrong and clearly contrary to established AEC policy. For example, the AEC entered into at least three uranium concentrate contracts with mills *having no captive ores.* (Tr. 474; D. Ex. 2, P.R. 93, 10/29/54; D. Ex. 2, P.R. 203 12/4/57). The responsibility for arranging and the risk of maintaining an adequate ore supply rested with the contractor. (D. Ex. 1, 5/12/56, p. 6). Furthermore, several mills were built with no more than a three year assured ore supply. (D. Ex. 1, 5/12/56, pp. 5-6; 2/9/57, p. 5). Respondent's assertion that this five year requirement was subsequently increased to a ten year period is also incorrect and misleading. The February 5, 1957 speech referenced states this:

> "Today we would like such proposals to include a reasonable prospect of at least a ten year ore supply for an economic size operation . . . [however] several mills have been built with no more than a three years assured ore supply." (pp. 5-6).

Thus it is clear that, although a five or ten year supply was desired by the AEC, it was not the *sine qua non* for a contract. On the contrary, this was just one of the many factors which would be negotiated out by the parties. Petitioner never had this opportunity. It is submitted that petitioner could have met the ten-year requirement on the basis of its established and inferred reserves and without any question would have met the five-year requirement.

6. Respondent's statement (p. 8) that petitioner received $2,500,000 from Silver Buckle for its ores is misleading. The contract between petitioner and Silver Buckle specifically provided that Silver Buckle would buy the Northwest ore reserves from the monies derived from the production of ores from the Peters

tract. Silver Buckle in fact proved a no-profit venture, expending over $883,000 in mining the ores as a custom shipper for which it received $821,000 from the Dawn mill. (Tr. 1669; Jt. Ex. A, Item 41.) Thus the $2,500,000 stated consideration was nothing more than that—stated consideration.

7. Respondent attempts to distinguish the principle announced in the *Radium Mines* case on the basis that petitioner did not have ore amenable to process or meeting the conditions laid down by the government. Petitioner has conclusively proved that its ores were so amenable and that it could have and would have met the conditions laid down by the government but for the AEC's failure and refusal to negotiate a final formal contract.

8. Respondent (p. 9) faults petitioner for failing to avail itself of the private market which the AEC created for uranium ore by virtue of the establishment of the Dawn Mill. Obviously petitioner did not attempt to sell its ore to Dawn so long as it was negotiating for a contract. With its own contract awaiting formalization, it would have been economically illogical for petitioner to expend large sums to high grade its ores in order to meet the Dawn mill average grade.

9. Respondent suggests (p. 9, note 3) that Northwest should have been relegated to the position of a custom producer at the Dawn Mill. Petitioner respectfully submits that all of the evidence set out in its petition clearly demonstrates that the AEC gave repeated encouragement to Northwest leading them to believe that a uranium concentrate contract (i.e., a mill contract) would be formalized. If the Northwest ores were in fact looked to by the AEC when it considered the Dawn contract, why then did the AEC encourage petitioner

for more than two and one half years to develop its own mill?

10. Finally, respondent's assertions at page 10 that the doctrine of promissory estoppel is inapplicable to the government and that the United States has not consented to be sued on contracts that are express or implied in fact misstates the law. (See Pet. 31, 17a). If respondent is correct in these statements, then petitioner respectfully submits that this Court would be advised to grant this petition for no other reason than to set the Court of Claims straight on these questions, since it clearly holds to the contrary. See *The Pabloc Co., Inc.* v. *United States,* 161 Ct. Cl. 369, 377-78 (1963); *Radium Mines, Inc.* v. *United States,* 139 Ct. Cl. 144, 153 F. Supp. 403 (1957).

Respectfully submitted,

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